

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of waste Management

4 (Amendment)

5 401 KAR 42:090. Financial responsibility.

6 RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart H, ~~[-Part 281,]~~ 42
7 U.S.C. 6991c

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-120~~[-40 C.F.R.~~
9 ~~Part 280 Subpart H, Part 281, 42 U.S.C. 6991c]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the
11 cabinet~~[Environmental and Protection Cabinet]~~ to develop and conduct programs that provide for
12 the prevention, abatement, and control of contaminants that may threaten the environment. KRS
13 224.60-105 requires the cabinet to regulate underground storage tanks~~[tank (UST) systems]~~ by
14 requiring registration, minimum construction and performance standards, leak detection,
15 recordkeeping, release reporting, corrective action, closure, financial responsibility, and other
16 requirements~~[standards]~~ to protect public health and the environment. KRS 224.60-105(3)
17 requires the cabinet to establish a regulatory program that implements federal requirements for
18 UST systems. ~~[401 KAR Chapter 42 identifies requirements for UST systems.]~~ This
19 administrative regulation establishes requirements for demonstrating financial responsibility for
20 corrective action and for compensation of third parties for bodily injury and property damage

1 caused by sudden and nonsudden accidental UST system releases arising from the operation of
2 UST systems containing petroleum.

3 Section 1. Applicability. Applicability shall be as established in 40 C.F.R. 280.90.

4 Section 2. Compliance dates. Compliance dates shall be as established in 40 C.F.R.
5 280.91.

6 Section 3. Amount and scope of required financial responsibility. Amount and scope of
7 required financial responsibility shall be as established in 40 C.F.R. 280.93.

8 Section 4. Allowable mechanisms and combinations of mechanisms. Allowable
9 mechanisms and combinations of mechanisms shall be as established in 40 C.F.R. 280.94.

10 Section 5. Financial test of self-insurance. Requirements for a financial test of self-
11 insurance shall be as established in 40 C.F.R. 280.95.

12 Section 6. Guarantee. Requirements for a guarantee shall be as established in 40 C.F.R.
13 280.96.

14 Section 7. Insurance and risk retention group coverage. Insurance and risk retention
15 group coverage shall be as established in 40 C.F.R. 280.97.

16 Section 8. Surety bond. Requirements for a surety bond shall be as established in 40
17 C.F.R. 280.98.

18 Section 9. Letter of credit. Requirements for a letter of credit shall be as established in 40
19 C.F.R. 280.99.

20 Section 10. Use of state-required mechanism. Use of a state-required mechanism shall be
21 as established in 40 C.F.R. 280.100.

22 Section 11. State fund or other state assurance. (1) Requirements for the state fund or
23 other state assurance shall be as established in 40 C.F.R. 280.101.

1 ~~(2)[Application of Federal Regulations. The requirements for demonstrating financial~~
2 ~~responsibility for corrective action and for compensation of third parties for bodily injury and~~
3 ~~property damage caused by sudden and nonsudden accidental UST system releases arising from~~
4 ~~the operation of UST systems containing petroleum are governed by 40 C.F.R. Part 280 Subpart~~
5 ~~H, KRS 224.60-105, 224.60-120, and this administrative regulation.~~

6 ~~Section 2. State Fund Mechanism for Financial Responsibility. (1)]~~ The Petroleum
7 Storage Tank Environmental Assurance Fund (PSTEAF) may be utilized as a mechanism to
8 demonstrate financial responsibility in accordance with subsection (1) of this section. The
9 requirements for PSTEAF can be found in 401 KAR 42:250.[with 40 C.F.R. 280.101.]

10 Section 12. Trust fund. Requirements for a trust fund shall be as established in 40 C.F.R.
11 280.102.

12 Section 13. Standby trust fund. Requirements for a standby trust fund shall be as
13 established in 40 C.F.R. 280.103.

14 Section 14. Local government bond rating test. Requirements for a local government
15 bond rating test shall be as established in 40 C.F.R. 280.104.

16 Section 15. Local government financial test. Requirements for a local government
17 financial test shall be as established in 40 C.F.R. 280.105.

18 Section 16. Local government guarantee. Requirements for a local government guarantee
19 shall be as established in 40 C.F.R. 280.106.

20 Section 17. Local government fund. Requirements for a local government fund shall be
21 as established in 40 C.F.R. 280.107.

1 Section 18. Substitution of financial assurance mechanisms by owner or operator.
2 Substitution of financial assurance mechanisms by owner or operator shall be as established in
3 40 C.F.R. 280.108.

4 Section 19. Cancellation or nonrenewal by a provider of financial assurance. Cancellation
5 or nonrenewal by a provider of financial assurance shall be as established in 40 C.F.R. 280.109.

6 Section 20. Reporting by owner or operator. Reporting by owner or operator shall be as
7 established in 40 C.F.R. 280.110.

8 Section 21. Recordkeeping. Recordkeeping shall be as established in 40 C.F.R. 280.111.

9 Section 22. Drawing on financial assurance mechanisms. Drawing on financial assurance
10 mechanisms shall be as established in 40 C.F.R. 280.112.

11 Section 23. Release from the requirements. Release from the requirements shall be as
12 established in 40 C.F.R. 280.113.

13 Section 24. Bankruptcy or other incapacity of owner or operator or provider of financial
14 assurance. Bankruptcy or other incapacity of owner or operator or provider of financial assurance
15 shall be as established in 40 C.F.R. 280.114.

16 Section 25. Replenishment of guarantees, letters of credit, or surety bonds.
17 Replenishment of guarantees, letters of credit, or surety bonds shall be as established in 40
18 C.F.R. 280.115.

19 Section 26. Suspension of enforcement. Suspension of enforcement shall be as
20 established in 40 C.F.R. 280.116.~~[if the following requirements are satisfied:~~

21 ~~(a) A person owns or operates a petroleum storage tank or tanks;~~

22 ~~(b) The owner or operator certifies financial responsibility for the petroleum storage~~
23 ~~tank(s) in accordance with KRS 224.60-120; and~~

1 ~~(e) The owner or operator registers the petroleum storage tank with the cabinet in~~
2 ~~accordance with 401 KAR 42:020.~~

3 ~~(2) An owner or operator shall be deemed by the cabinet to have satisfied the~~
4 ~~requirements of subsection (1) to utilize the Petroleum Storage Tank Environmental Assurance~~
5 ~~Fund to meet the financial responsibility requirements of 40 C.F.R. 280.101 if:~~

6 ~~(a) A Certificate of Registration and Reimbursement Eligibility has been issued to the~~
7 ~~owner or operator of a petroleum storage tank in accordance with 401 KAR 42:020; and~~

8 ~~(b) The cabinet has determined that the owner or operator qualifies for participation in the~~
9 ~~Financial Responsibility Account, or the Petroleum Storage Tank Account through compliance~~
10 ~~with 401 KAR 42:030 and 42:040.~~

11 ~~(3) Federal and state-owned facilities shall not be eligible to utilize the state fund~~
12 ~~mechanism.]~~

13 Section 27[3]. Certification of Financial Responsibility. An owner or operator shall
14 certify, through signature on the UST Facility Registration Form, DEP 7112, [(January 2006);]
15 required in 401 KAR 42:020, that financial responsibility has been established and maintained in
16 accordance with [Section 1 of] this administrative regulation.


17 Section 28. Extensions. (1) The owner or operator of a UST system may request an
18 extension to a deadline established by this administrative regulation or established by the cabinet
19 in writing pursuant to this administrative regulation.

20 (2) The extension request shall be submitted in writing and received by the Underground
21 Storage Tank Branch of the Division of Waste Management prior to the deadline.

22 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
23 not have a detrimental impact on human health or the environment.

401 KAR 42:090 approved for filing.

4/14/11
Date


Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for demonstrating financial responsibility for petroleum UST systems.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish financial responsibility requirements for petroleum UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statute by referencing the federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by referencing the federal regulations and specifying the state-mechanism requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment changes the existing administrative regulation by separating 40 C.F.R. Subpart H into sections.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to be consistent with the federal regulation and to be compliant with KRS 13A requirements.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the authorizing statutes by referencing the federal regulations and by specifying that PSTeAF is the state-mechanism for financial responsibility.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute by making it clear that there are multiple types of financial responsibility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are approximately 3,700 petroleum UST facilities in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

There are no additional actions to regulated entities from this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Not applicable

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Not applicable

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no additional cost with implementing this amendment.

(b) On a continuing basis: There is no additional cost with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Funding will come from tank fees, PSTeAF, and US EPA grants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no need to increase a fee to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This amendment does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. All petroleum UST owners and operators shall have some form of financial responsibility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:090

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

40 C.F.R. 280 Subpart H; KRS 224.60-105

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment does not generate revenue.

(c) How much will it cost to administer this program for the first year?

It will not cost the cabinet additional funds to implement this amendment.

(d) How much will it cost to administer this program for subsequent years?

It will not cost the cabinet additional funds to implement this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 280 Subpart H

2. State compliance standards.

KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. 280 Subpart H

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable